

ZAMBEZI WATERCOURSE COMMISSION



ZAMCOM Procedures for Notification of Planned Measures

Angola Botswana Malawi Mozambique Namibia Tanzania Zambia Zimbabwe



Win-win cooperation/ Cooperacao, ganhas tu, ganho eu



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Introduction and context

SECTION 1: Introduction

The notification of planned measures is an important element of international water law and crucial for the cooperative management of shared watercourses. For Zambezi Watercourse states the ‘duty to notify’ is a legally binding international treaty obligation set out in Art. 16 of the Agreement establishing the Zambezi Watercourse Commission (ZAMCOM Agreement) as well as Art. 4 of the Revised SADC Protocol on Shared Watercourses.

While the Revised SADC Protocol provides detailed rules and procedures on notification, in line with its character as a framework agreement it also provides for basin specific rules and procedures to be developed (provided they are in accordance with the spirit and intent of the Revised Protocol). Art. 16 of the ZAMCOM Agreement provides some specific rules in this regard, but lacks the detail and clarity needed to ensure easy compliance and efficient implementation of the notification process. Clear guidance to Member States on detailed notification requirements, e.g. timelines, format, required supporting information etc., will ensure faster project development, approval and implementation and significantly reduce the possibility of disputes arising over planned projects. In this context, commissioned by the Zambezi Watercourse States, through ZAMCOM, these detailed Procedures for Notification of Planned Measures have been developed

In developing the present Procedures, a comprehensive series of national consultations took place with officials from the relevant ministries in the eight Zambezi Watercourse States with a view to identifying each State’s principal preferences, concerns and priorities. Within the margin of flexibility permitted by Article 16 of the ZAMCOM Agreement and Article 4(1) of the SADC Revised Protocol, these Procedures make every possible effort to accommodate the approaches to inter-State notification preferred by the Member States, whilst seeking to ensure operational effectiveness and compliance with international law obligations.

The Procedures consist of two parts, Part I being an introductory part highlighting the legal basis for the Procedures and the guiding principles, with Part II containing the detailed procedural rules and processes for carrying out a notification process in practice.

The Procedures were adopted by the ZAMCOM Council of Ministers in their ordinary meeting of 23 February, 2017 in Tete, Mozambique.



SECTION 2: Legal Basis of Notification in International Law

The obligation to provide notification of planned measures is the most clearly established obligation applying to Watercourse States under general international water law. Quite apart from specific conventional arrangements arising under regional water resources agreements or under specific river basin agreements, a duty to notify indisputably arises under generally applicable customary international law, either as an element of the general (customary) duty to cooperate with co-basin States over shared water resources or as an element of the procedural due diligence required of Watercourse States in order to meet the requirements of the (customary) substantive obligations to take all reasonable measures to prevent significant transboundary harm and to utilise shared waters in an equitable and reasonable manner. Clearly a State cannot claim to have taken all reasonable measures to avoid transboundary harm, or to have taken due account of the interests and concerns of co-basin States, where it has not provided adequate notification of planned measures and adequate opportunity for notified States to respond to such notification. In the 2010 *Pulp Mills (Argentina v. Uruguay)* case, the International Court of Justice (ICJ) recognised the existence of a stand-alone obligation in international law for States planning measures or projects with the potential to significantly impact upon a shared watercourse or other watercourse States to provide meaningful notification.

Helpfully, there exists a comprehensive framework of treaty law applicable to the Watercourse States of the Zambezi River, adopted at both the basin and regional levels, which establishes a clear and unequivocal duty for the State parties to notify. At the basin-level, Article 16 of the 2004 *Agreement on the Establishment of the Zambezi Watercourse Commission* (ZAMCOM Agreement) creates a quite comprehensive obligation to notify, with ZAMCOM enjoying a very central role in the notification process created thereunder. Article 16 sets down the essential parameters of key elements of the notification process, but effective implementation of the process requires further detail regarding, for example, the information to be included in any notification, the required documentation, the timelines for each stage in the process, the arrangements for public notification, the role of national legal requirements, etc.

In addition, at the regional level Article 4(1) of the 2000 *SADC Revised Protocol on Shared Watercourses* provides greater detail on a possible process for inter-State notification, which can inform the development of ZAMCOM Notification Procedures. The Revised SADC Protocol establishes an overarching framework of general rules, though it permits the parties under Article 6(3) to enter into more specific watercourse agreements ‘which apply the provisions of this Protocol to the characteristics and uses of a particular shared watercourse or part thereof’. Therefore, wherever the ZAMCOM Agreement might be found to lack detail, the Protocol can serve to inform and guide the elaboration of the ZAMCOM Notification Procedures.

Of course, the same abundance of global State practice that has established the duty to notify as a generally applicable obligation of customary international law, also provides a wealth of international best practice which can help to inform the specific requirements of adequate notification. Most notably, Articles 11-19 of the 1997 *United Nations Convention on the Non-Navigational Uses of International Watercourses* (UNWC), the pre-eminent global framework convention in the field which is commonly understood to codify the position in customary international law and to embody international best practice, set out detailed rules on notification of planned measures and on related consultation and negotiation arrangements.

Likewise, several river basin commissions operating internationally have already developed procedures for the notification of co-riparian States regarding planned measures including, notably, the Mekong River Commission’s *Procedures for Notification, Prior Consultation and Agreement* (PNPCA). Where relevant and useful international experience has emerged in respect of such procedures, this may also inform the development of the present Procedures.

Further, since the International Court of Justice’s landmark 2010 judgment in the *Pulp Mills (Argentina v. Uruguay)* case, it has been accepted almost universally that, in order to be meaningful, inter-State notification of planned measures should be accompanied by some form of environmental impact assessment (EIA) concerning the transboundary impacts of the planned programme, project or activity in question. Moreover, international practice would suggest that such notification might occur in several stages in order to facilitate the meaningful engagement of notified States in the conduct of the EIA process. International best practice also demonstrates a broad consensus regarding the essential features and key characteristics of any such EIA process. The 1991 UNECE *Convention on Environmental Impact Assessment in a Transboundary Context* (Espoo Convention) comprises a key reference instrument in this regard.



SECTION 3: Guiding Principles

The Member States and the Commission shall be guided in the application of the present Procedures by the following principles:

- The principles of sustainable development and equitable and reasonable utilisation, which characterise the general spirit and intent of the ZAMCOM Agreement and essentially requires that each Member State should take account of the economic, social and environmental interests of other Member States, as well as the community of interest existing amongst all the Member States;
- The principles of prevention of (transboundary) harm and precautionary action, as enshrined in Article 12(1) of the ZAMCOM Agreement;
- The principle of good faith cooperation between Member States, which pervades the entire ZAMCOM Agreement and is expressly included in Article 12 (1);
- The principle of assessment of trans-frontier impacts, as enshrined in Article 12(1) of the ZAMCOM Agreement; and
- The principles of transparency and public participation, as embodied in Article 16(8) of the ZAMCOM Agreement
- The Principle of “subsidiarity” in water resources management, meaning that the present Procedures will wherever possible rely on existing provisions of the national law of the ZAMCOM Member States in order to give effect to requirements arising under international water law. For example, rather than develop and put in place a separate and parallel regime of EIA for planned measures impacting upon the waters or ecosystem of the Zambezi River, these Procedures will seek to utilise EIA procedures existing in the domestic legal systems of the ZAMCOM Member States.



SECTION 4: Definition of Terms

Terms defined in the ZAMCOM Agreement or the SADC Revised Protocol shall retain the meaning attributed to them under these instruments.

“ADVERSELY AFFECT”: means that a planned programme, project or activity has the potential to have a significant impact on the water quality, flow regime or ecosystem of the Zambezi Watercourse (as defined in Article 1 of the ZAMCOM Agreement), or on the established or planned water-related uses or benefits of another ZAMCOM Member State.

“ALL AVAILABLE DATA AND INFORMATION”: means all the information relating to the nature of the planned programme, project or activity, and to the risks involved as well as any injury which might result, necessary in order to enable the potentially affected State(s) to conduct its own evaluation of the situation. Where there exist gaps in such information, the notifying State cannot rely on its unavailability, but will be required actively to generate such necessary data and information by means, for example of an EIA process.

“DOCUMENTED EXPLANATION”: means a detailed and comprehensive written technical justification, based on objectively credible reasons:

- a) for forming the belief that a Member State is planning a programme, project or activity (under Article 16(2)); or
- b) for finding that a planned programme, project or activity will not adversely affect the Zambezi Watercourse or any other Member State (under Article 16(3)).

The requirements for a documented explanation will depend on the facts of each case.

“ENVIRONMENTAL IMPACT ASSESSMENT”: means a national procedure for evaluating the likely impact of a proposed programme, project or activity on the environment, including its transboundary impact and the economic and social consequences of such impact.

“FACT-FINDING STUDY”: means an impartial process for acquiring detailed knowledge about the factual circumstances of any dispute arising regarding planned measures. The report produced by a fact-finding commission shall confine itself to establishing technical facts and shall be non-binding as regards any recommendations contained therein and non-judgmental as regards the lawfulness of any act(s) of the parties in dispute. The fact-finding commission may put forward in its report such recommendations as it deems appropriate for an equitable settlement of the dispute, which the parties concerned shall consider in good faith.

“PLANNED MEASURES”: pursuant to Article 16 of the ZAMCOM Agreement, planned measures requiring notification shall include any programme, project or activity planned by one or more ZAMCOM Member States which may adversely affect the Watercourse or any other Member State.

“PUBLIC”: means one or more natural or legal (juristic) persons within any Member State and, in accordance with national legislation or practice in the notifying or notified State, their associations, organisations or groups. For the purposes of Article 16(8) of the ZAMCOM Agreement, an area likely to be affected by a proposed programme, project or activity is a question of fact which, in the event of any disagreement, will be determined by Commission.

“SIGNIFICANT IMPACT”: is an impact that need not be substantial, but is one which is of sufficiently serious consequence to warrant inter-State notification, and does not include small, insignificant inconveniences which can be regarded as *de minimis* and overlooked in a spirit of good neighbourliness. In determining whether any planned programme, project or activity may adversely affect the Watercourse or any other Member State pursuant to Article 16 of the ZAMCOM Agreement, the Member State planning such programme, project or activity shall have regard to the principle of precaution set out in Article 12(1)(d) of the ZAMCOM Agreement.

“TRANSBOUNDARY IMPACT”: means any impact within an area under the jurisdiction of a Member State caused by a proposed programme, project or activity, the physical origin of which is situated wholly or in part within an area under the jurisdiction of another Member State.



SECTION 5: Process and Form of Notification

5.1 Notification by a Member State

1. Responsibility for notification

Pursuant to Article 16(1) of the ZAMCOM Agreement, it is the responsibility of a Member State(s) engaged in planning any programme, project or activity with regard to the Zambezi Watercourse or which may adversely affect the Watercourse or any other Member State to notify the Secretariat and to provide all available data and information regarding such programme, project or activity.

Where two or more Member States are engaged in planning such a programme, project or activity, they shall agree amongst themselves which of them has primary responsibility for notification. In the absence of such agreement all Member States will have individual responsibility for notification.

2. Notification channels

In the case of either preliminary or technical notification, a Member State planning such a programme, project or activity shall, pursuant to Article 16(1) of the ZAMCOM Agreement, ensure that whatever national body(ies) it deems appropriate (for example, the Department / Ministry of Foreign Affairs or the Head of Delegation to ZAMTEC) forwards a formal notification letter and all accompanying data and information to the Secretariat.

After having determined that the information contained in the notification is adequate and complete having regard to the requirements of paragraph 6 and Section 6 below, the Secretariat shall without delay transmit the notification letter and the accompanying technical data and information to the national body(ies) identified to the Secretariat as appropriate to receive it by each of the other Member States.

Each countries' nominated body shall acknowledge receipt of the notification to the Secretariat.

3. Non-validity of third party notifications

Although programmes, projects or activities will often be financed by an International Financial Institution (IFI) / Multilateral Development Bank (MDB), which may require an EIA and/or inter-State notification under the terms of its environmental and social safeguard policy, the duty to notify under Article 16(1) of the ZAMCOM Agreement remains the direct responsibility of the Member State planning such programme, project or activity and notification by such IFI/ MDB or any other third party on behalf of a Member State shall not constitute a legally valid notification in terms of these Procedures. However, EIA studies or other information relating to such programme, project or activity prepared by or on behalf of IFIs / MDBs may be used by the notifying Member State for the purposes of information accompanying notification.

4. Timing of notification

The stipulation under Article 16(1) to “forthwith” notify the Secretariat stipulates that such notification must be made as early as possible and a notifying Member State should not delay on the grounds that all relevant information is not yet available.

5. Stages of notification

In order to facilitate the dual requirements of notifying as early as possible in the life-cycle of the planned programme, project or activity, and of providing all available data and information relating thereto, it shall be required, in line with international best practice, that notification involves at least two stages:

- a) Preliminary notification, which should take place as soon as the essential elements of the programme, project or activity in question have been determined and a decision has been taken regarding the feasibility of such programme, project or activity. Preliminary notification should normally occur in advance of completion of any Environmental Impact Assessment of the programme, project or activity in question (including assessment of transboundary impact), in the conduct of which any other Member State which may be adversely affected should be invited to participate.
- b) Technical notification, which should take place once all the technical details of the programme, project or activity in question are known and after any Environmental Impact Assessment (*including assessment of transboundary impact*) has been completed.

6. Completeness of notification

Following receipt by the ZAMCOM Secretariat of such notification either preliminary or technical, the ZAMCOM Secretariat shall without delay satisfy itself of the adequacy and completeness of the information contained therein, having regard to the requirements set out in Section 6 of these Procedures. If the Secretariat cannot confirm the adequacy and completeness of the information contained in a notification, the Executive Secretary shall without delay and in writing inform the relevant body of the notifying State of the Secretariat's negative determination, of the reasons therefor, and of possible steps and timeframes for resubmission of the notification.

Where the necessary requirements are met, the ZAMCOM Executive Secretary shall confirm the adequacy and completeness of the notification as received and this date shall be recorded formally as the official date of notification.

7. Beginning of review time lines

The six-month period within which the Commission shall study and evaluate the data and information pertaining to the planned programme, project or activity pursuant to Article 16(4) of the ZAMCOM Agreement shall begin to run once preliminary notification has taken place. However, in order to ensure that the other Members States shall have adequate time to consider and respond to notification, this period will be extended until after any EIA has been completed, but shall not extend beyond the relevant time-limit (post EIA completion) established for project approval in the national law of the notifying Member State.

An overview of applicable time lines is provide in Appendix 1.

8. Informal communication and consultation

Notwithstanding the two formal stages of notification outlined immediately above, Member States are in addition encouraged to communicate informally through their respective lead Ministries / Departments regarding the planned programme, project or activity, with a view to ensuring effective cooperation and the avoidance of disputes. Such informal communication can serve to augment, but not to replace the formal notification outlined above.

9. Communication of responses to notification

Formal responses to a notification shall be communicated in writing through the same channels as the notification itself, i.e. as defined in paragraph 2 of these procedures.

5.2 Request by the Commission or one Member State to another Member State to Notify

10. Right to request notification

Pursuant to Article 16(2) of the ZAMCOM Agreement, the Commission or any Member State, where either has reasonable grounds, may request another Member State it believes to be planning a programme, project or activity referred to in Article 16(1) to comply with the requirements of Article 16(1).

11. Letter of request

Such request shall consist of a formal communication in writing sent to the Executive Secretary of ZAMCOM by the national body(ies) deemed appropriate by the requesting Member State, and shall be addressed to the national body(ies) deemed appropriate by the Member State believed to be planning a programme, project or activity.

12. Content of request letter

Such request shall include the following information as a minimum:

- a) Name of the Member State making the request, where applicable;
- b) Date of submission of request;
- c) Member State Ministry / Agency making the request, including name, postal address, telephone number and e-mail address;
- d) Contact person, including name, postal address, telephone number and e-mail address;
- e) Brief description of the programme, project or activity in question, including its nature and purpose and a documented explanation setting forth the reason(s) for requesting the Member State to comply with the provisions of Article 16(1) of the ZAMCOM Agreement.

13. Documented explanation

Such request shall be accompanied by a documented explanation setting forth its reasons and shall address as a minimum:

- a) If and how the planned programme, project or activity may adversely affect the Zambezi Watercourse or any other Member State;


- b) If and how the planned programme, project or activity may be inconsistent with the principles of the ZAMCOM Agreement; and
- c) The relationship of the planned programme, project or activity to the “IWRM Strategy and Implementation Plan for the Zambezi Watercourse and/or the Strategic Plan for the Zambezi Watercourse.

14. Validity of notification request

Where the Member State believed to be planning a programme, project or activity determines, pursuant to Article 16(3) of the ZAMCOM Agreement, that it will not adversely affect the Zambezi Watercourse or any other Member State, the requesting Member State(s) may refer the matter to ZAMTEC which may issue an opinion as to whether or not notification should be required. If disagreement persists the Member State(s) involved may refer the matter to the Council, pursuant to Article 8(2)(d) of the ZAMCOM Agreement, with a view to arriving at an amicable settlement thereof.

15. Initiation of notification process

Where such request is accepted by a Member State to which it is addressed, or where the Commission determines that such request is justified, that Member State shall, consistent with the provisions set out in Section 5.1 of these Procedures, forthwith provide preliminary notification and/or technical notification to the ZAMCOM Secretariat as soon as is reasonably practicable in the circumstances.



SECTION 6: Content of Notification

16. Content of preliminary notification

Notification by a Member State of any programme, project or activity will consist of a formal communication in writing addressed to the ZAMCOM Executive Secretary and providing the following data and information as a minimum:

- i. Name of the notifying Member State;
- ii. Date of submission of preliminary notification;
- iii. Notifying Ministry / Agency, including name, postal address, telephone number and e-mail address for the;
- iv. Contact person, including name, postal address, telephone number and e-mail address;
- v. Name of the programme, project or activity;
- vi. Brief description of the programme, project or activity, including its nature and purpose;
- vii. Expected time-frame for implementation, including anticipated commencement and completion dates;
- viii. All available data and information, including:
 1. As detailed a description of the programme, project or activity as is available at that time;
 2. Any available pre-feasibility / feasibility studies; preliminary designs
 3. Any draft ToR for an EIA and/or any scoping report for an EIA.
 4. The relationship of the proposed programme, project or activity to the IWRM Strategy and Implementation Plan for the Zambezi Watercourse and/or the Strategic Plan for the Zambezi Watercourse.

5. The source of funding for the project and any specific conditions required or safeguard policies applied by the funding agency in question.
- ix. Where appropriate, an invitation to any Member State which may be adversely affected to make submissions regarding any aspects of the conduct of any EIA relevant to assessment of transboundary impact.
 1. Such invitation shall include:
 - a) Details of any preferred process or format for making submissions;
 - b) Details of the time-frame for making submissions;
 - c) Details of the issues which such submission might address.
 2. Such submission might typically address:
 - a) Potential impacts to be included for study and specified in the terms of reference for the EIA which are relevant to assessment of transboundary impact;
 - b) Preferred expertise to be included among the consultants to be selected to conduct EIA due to the relevance of such expertise to assessment of transboundary impact;
 - c) Suggested arrangements for public consultation within that notified Member State in relation to the programme, project or activity in question.

17. Content of technical notification

Notification by a Member State of any programme, project or activity will consist of a formal communication in writing addressed to the ZAMCOM Executive Secretary and providing the following data and information as a minimum:

- i. Name of the notifying Member State;
- ii. Date of submission of technical notification;
- iii. Notifying Ministry / Agency, including name, postal address, telephone number and e-mail address;
- iv. Contact person, including name, postal address, telephone number and e-mail address;
- v. Name of the programme, project or activity;
- vi. Brief description of the programme, project or activity, including its nature and purpose;

- vii. Expected time-frame for implementation, including anticipated commencement and completion dates;
- viii. All available data and information, including:
 - 1. A comprehensive and technically detailed description of the programme, project or activity;
 - 2. An evaluation addressing whether or not the proposed programme, project or activity will adversely affect the Zambezi Watercourse or any other Member State;
 - 3. Where appropriate, a documented explanation for finding that a planned programme, project or activity will not adversely affect the Zambezi Watercourse or any other Member State, pursuant to Article 16(3) of the ZAMCOM Agreement;
 - 4. An evaluation addressing if and how the proposed programme, project or activity is consistent with the principles of the ZAMCOM Agreement.
- ix. An executive summary of an EIA report including the findings of an assessment of transboundary impact and containing, as a minimum, the contents outlined in Annex II of the 1991 Espoo Convention on Environmental Impact in a Transboundary Context (reproduced in Annex I to these Procedures). This executive summary shall be translated into the other official ZAMCOM language, where appropriate for the benefit of any Member State likely to be adversely affected by the programme, project or activity in question.
- ix. Documented evidence that members of the public in any area(s) of another Member State likely to be affected by a proposed programme, project or activity have, pursuant to Article 16(8) of the ZAMCOM Agreement, been adequately informed thereof and have been provided with the opportunity to meaningfully comment thereon or object thereto, as well as a record of the transmission of such comments and/or objections to the Commission. Such public provision of information and public consultation may be carried out as an element of an EIA conducted in respect of the proposed programme, project or activity.



SECTION 7: Study and Evaluation of Notification

18. Scope of review

The scope of the study and evaluation of the data and information pertaining to the planned programme, project or activity, will be commensurate with its potential consequences for effective realisation of the principles of the ZAMCOM Agreement within the Zambezi Basin.

Therefore, the review shall address, where relevant, the potential economic, social and environmental consequences of the planned programme, project or activity, having regard to the indicative list of factors set out in Article 13(3) of the ZAMCOM Agreement. In particular, the review will address the risk(s) of significant harm to the Watercourse or to any Member State, and any proposed measures to prevent, eliminate, mitigate, reduce or control such harm, having regard to Article 14 of the ZAMCOM Agreement.

Where the planned programme, project or activity in question has already been considered in the context of the Strategic Plan for the Zambezi Watercourse, a detailed study and evaluation may not be required as mere reference to its status would suffice.

19. Member States' review of notification

Recognising that the Member States themselves will be in the best position to determine the nature and extent of any impact of any planned programme, project or activity upon their national interests, it is primarily the responsibility of each Member State individually to evaluate the technical information provided and to form and submit to the Secretariat its opinion on the possible impact of such programme, project or activity on the Watercourse or on its own interests.

20. Technical support to review process

Recognising the serious capacity constraints existing at the level of several national authorities to deal in a timely manner with the volume of technical information expected to accompany a notification of a major programme, project or activity, and the need to ensure that Member States review such information as expeditiously as possible, ZAMCOM Secretariat will maintain a roster of approved (international and national) consultants to assist Member States with the evaluation of the technical information accompanying notification and with the development of a response.

Unless otherwise decided, the costs for the consultants shall be borne by the respective Member State using their services. Where appropriate, payment of such costs might be taken into account for the purposes of Article 19(3) of the ZAMCOM Agreement.

21. Consolidation of responses

The ZAMCOM Secretariat shall compile a synthesis report of the compiled submissions of potentially affected or interested Member States following a review by their national authorities of the technical information accompanying a notification. The Secretariat's summary report on the evaluation by the Member States of the data and information pertaining to the planned programme, project or activity, and the Member States' findings as to the possible (adverse) effects thereof, will be completed as expeditiously as possible, but in any case, within a period of six months of the Secretariat's confirmation of the adequacy and completeness of the notification as received. The Secretariat shall submit its report to ZAMTEC in order for ZAMTEC to develop a recommendation to the ZAMCOM Council in accordance with Section 8 of these Procedures.

Pursuant to Article 16(5), during this period, (or a longer or shorter period agreed upon by the Member States involved), the Member State planning the programme, project or activity in question shall, if so requested by another Member State, refrain from implementing or permitting the implementation of such programme, project or activity.



SECTION 8: ZAMTEC Recommendation to ZAMCOM Council

22. Recommendation by ZAMTEC

Based on the summary report prepared by the Secretariat, ZAMTEC shall develop a recommendation to the ZAMCOM Council as follows:

- a) A finding that the planned programme, project or activity is consistent with the principles enshrined in the ZAMCOM Agreement. Such recommendation may be conditional on further discussions and negotiations leading to detailed agreement of trade-offs (benefit-sharing) and/or compensation as required. In such case the ZAMTEC may recommend that the ZAMCOM Council issue the Member State planning the programme, project or activity with a finding of “no objection”, thereby permitting the Member State to proceed. Ideally, the planned programme, project or activity will already be included in the Strategic Plan for the Zambezi Watercourse.
- b) A finding that the planned programme, project or activity is not consistent with the principles of the ZAMCOM Agreement. Such recommendation would request the notifying Member State to refrain from implementing the planned programme, project or activity without the (formal) consent of the potentially affected Member States. Such recommendation may also request the notifying Member State to enter into consultations and, where necessary, negotiations with the potentially affected Member States to be facilitated by the Secretariat. Such consultations and negotiations would be conducted in good faith by all Member States involved and would be conducted with a view to identifying a modified programme, project or activity which meets the requirements of the principles of the ZAMCOM Agreement.

23. Communication of recommendation

In case of the ZAMTEC making a recommendation in accordance with paragraph 22 a (no objection), the recommendation will be transmitted without delay by the Executive Secretary to the Member States through the designated bodies as defined in paragraph 2.

In case of the ZAMTEC making a recommendation in accordance with paragraph 22 b, the ZAMTEC or the Member State(s) involved may refer the matter to the Council, pursuant to Article 8(2)(d) of the ZAMCOM Agreement, with a view to arriving at an amicable settlement thereof.



SECTION 9: Consultation, Negotiation and Dispute Resolution

24. Consultations and negotiations

In accordance with Article 21 of the ZAMCOM Agreement, where a dispute arises regarding notification of a planned programme, project or activity, the Member States through ZAMTEC, shall expeditiously enter into consultations and negotiations in a spirit of good faith and equity with a view to arriving at an amicable settlement.

25. Council recommendation

The Council may, where appropriate, make recommendations to the parties to the dispute with a view to arriving at an amicable settlement thereof.

26. Technical investigation / study

If so requested by any Member State, and if deemed necessary by the ZAMTEC, the Secretariat may be instructed by ZAMTEC to undertake or commission a preliminary technical investigation / study, pursuant to Article 16(6) of the ZAMCOM Agreement, with a view to clarifying factual aspects of the planned programme, project or activity in dispute between the Member States involved. The Commission may specify detailed conditions regarding the conduct of such technical investigation / study including, inter alia, conditions regarding the payment of contributions by the relevant Member States to defray the costs involved. If deemed appropriate by the Executive Secretary, the Commission may appoint, in a manner consistent with ZAMCOM's Procurement Guidelines, suitably qualified consultants to assist the Secretariat in conducting the technical investigation / study.

27. Good offices, mediation and arbitration

If the parties to the dispute have not arrived at a settlement through the means provided for immediately above, they may jointly seek the good offices of, or request mediation or conciliation by, a third party, or make use, as appropriate, of the Commission, or agree to submit the dispute to arbitration or to a regional or international court or tribunal. Ad hoc arbitration should be conducted along the lines set out in the Annex to the 1997 United Nations Watercourses Convention.

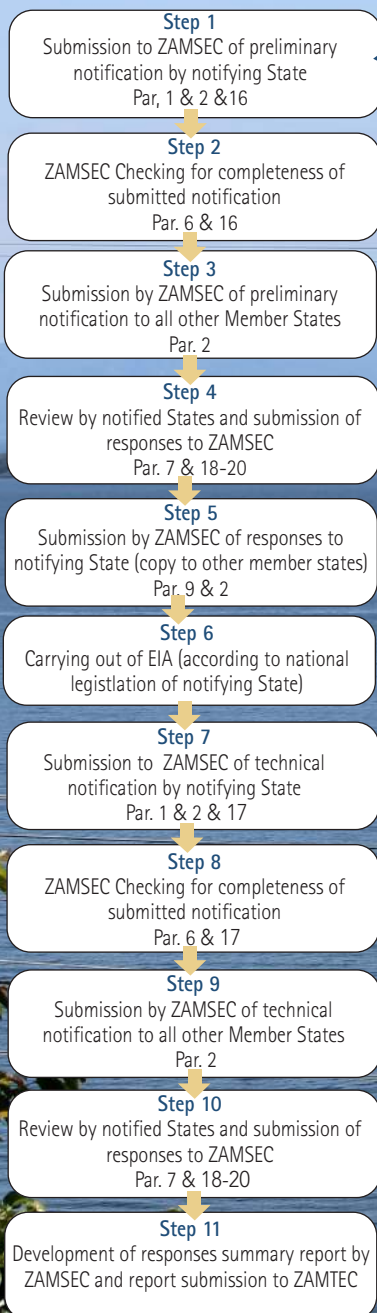
28. Impartial fact-finding for dispute resolution

If, after a reasonable time, the parties concerned have not been able to settle their dispute regarding notification through negotiation or any other means referred to in paragraph 26 above, the dispute shall be submitted, at the request of any of the parties to the dispute, to impartial fact-finding along the lines set out in Article 33 of the 1997 United Nations Watercourses Convention.

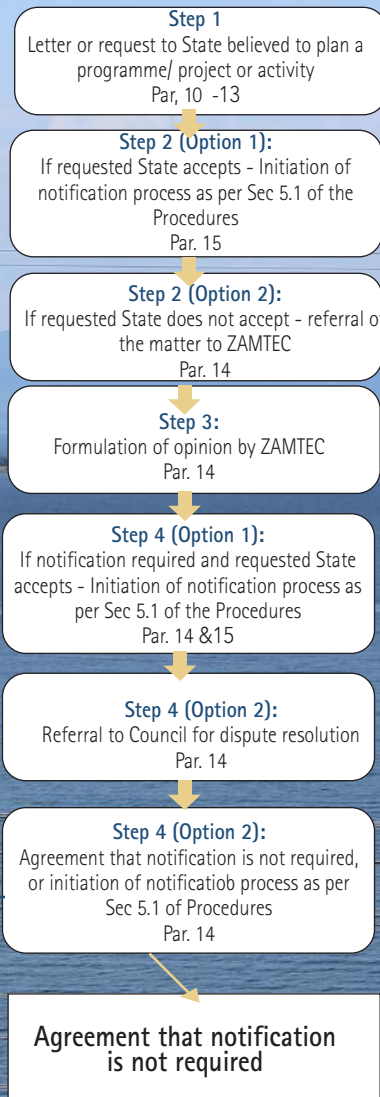
SECTION 10

ZAMCOM PROCEDURES FOR NOTIFICATION OF PLANNED MEASURES FLOW CHART

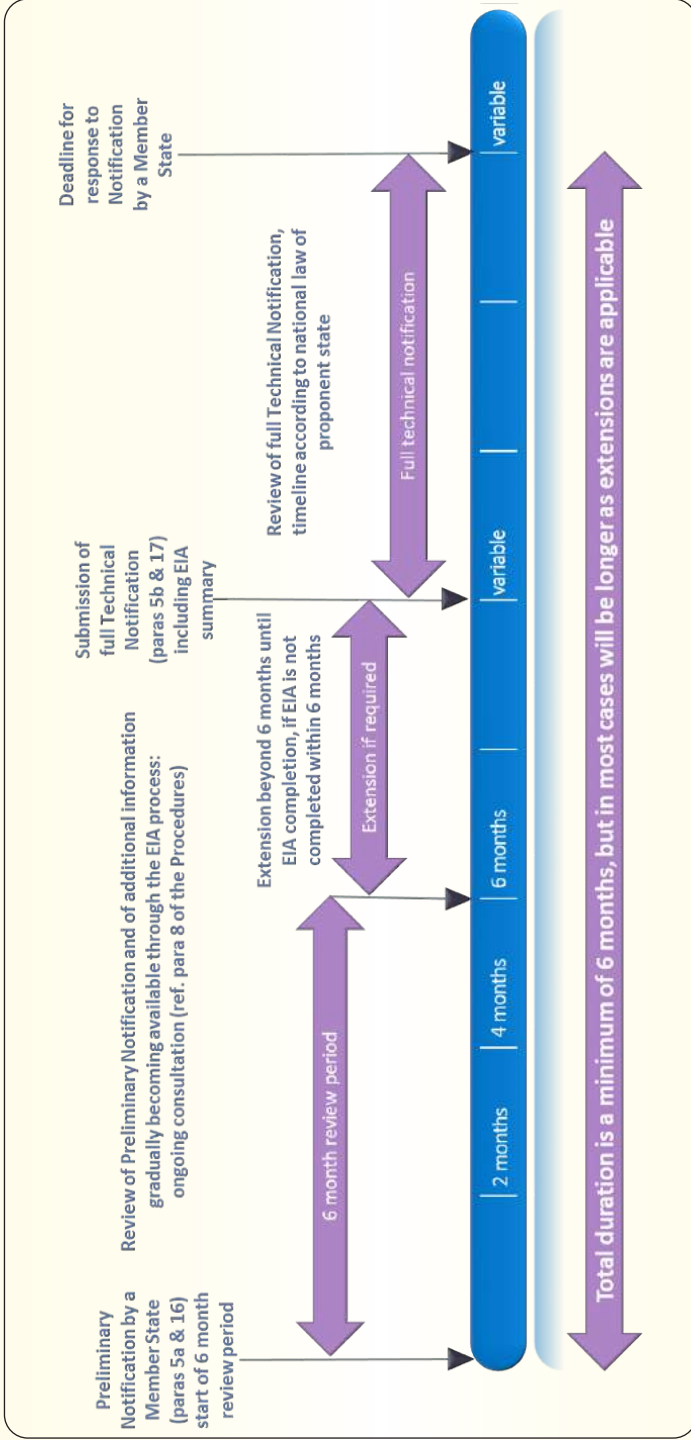
5.1 Notification by a Member State



5.2 Request by the Commission or one Member State to another Member State to notify



Appendix 1: Overview of review timelines in accordance with paragraphs 4 to 9 of the Procedures



Annex 1: Letter of Notification

[Official Letterhead]

Address

Date

Copy: Head of Delegation of ZAMTEC of Notifying Member State (where appropriate)]

**RE: NOTIFICATION OF PLANNED PROGRAMME, PROJECT
OR ACTIVITY**

Dear Executive Secretary,

In accordance with the ZAMCOM Agreement and the ZAMCOM Procedures for Notification of Planned Measures, I hereby wish to provide you with [Preliminary / Technical] notification of our planned [Name of Programme, Project or Activity].

I enclose a completed Form and Checklist for [Preliminary / Technical] Notification and all available supporting documentation.

Signature

*[Name of Official Representative of the
National Body Deemed Appropriate
by the Notifying Member State]*

Annex 2: Form and Checklist for Preliminary Notification

| | | |
|--|---|--|
| Name of Programme, Project or Activity | Name, Address and Contact Details of Notifying Agency | Name, Address and Contact Details of Notified Agency |
| Date of Submission of Preliminary Notification | Anticipated Commencement Completion Dates | Funding Source and applicable Safeguard Policy if any) |

Brief Description of Programme, Project or Activity

Relationship of Programme, Project or Activity to:

1. IWRM Strategy and Implementation Plan for the Zambezi watercourse
2. Strategic Plan for the Zambezi Watercourse

Indicate (Y/N) inclusion of the following documentation (where appropriate):

| Document | Yes | No |
|---|-----|----|
| Detailed Description of Programme, Project or Activity | | |
| (Pre-) Feasibility Study for Programme, Project or Activity | | |
| Preliminary Design for Programme, Project or Activity | | |
| Draft ToR for an EIA for Programme, Project or Activity | | |
| Other (specify) | | |

Indicate (Y/N) inclusion of details for the process for making submissions (where appropriate):

| Process Arrangements | Yes | No |
|--|-----|----|
| Format (written document; electronic submission; preferred language; etc.) | | |
| Time-Frame (deadline for submission of comments; suggestions; concerns; suggestions; objections; etc.) | | |
| Process for Related Interim Communications (request for extension of submission deadline; request for further information / clarification; etc.) | | |
| Issues on Which Submissions are Invited (including, e.g.): <ul style="list-style-type: none"> • Potential impacts to be included in study (EIA); • Preferred (EIA) consultants' expertise / qualifications; • Preferred arrangements for public consultation within impacted / notified Member State, etc.) | | |
| Other (specify) | | |

Annex 3: Form and Checklist for Technical Notification

| | | |
|--|--|---|
| Name of Programme, Project or Activity | Name, Address and Contact Details of Notifying Agency | Name, Address and Contact Details of Notified Agency |
| Date of Submission of Technical Notification | Anticipated Commencement Completion Dates | |

Brief Description of Programme, Project or Activity

Indicate (Y/N) inclusion of the following documentation (where appropriate):

| Document | Yes | No |
|---|-----|----|
| Detailed Technical Description of Programme, Project or Activity. | | |
| Screening Evaluation for Adverse Effects of Programme, Project or Activity. | | |
| Documented Explanation for Finding of No Adverse Effects of Programme, Project or Activity. | | |
| Evaluation of Consistency of Programme, Project or Activity with the Principles of the ZAMCOM Agreement. | | |
| Executive Summary of EIA Report, including Assessment of Transboundary Impacts. | | |
| Translation of Executive Summary of EIA Report into Language of Affected Member State. | | |
| Documented Evidence of Public Information Disclosure and Public Consultation Activities in Affected / Notified Member State(s). | | |
| Other Relevant Documentation (specify, e.g. full EIA Report for Programme, Project or Activity). | | |

Indicate (Y/N) inclusion of details for the process for responding to Technical Notification:

| Process Arrangements | Yes | No |
|--|-----|----|
| Time-Frame (deadline for submission of comments; suggestions; concerns; suggestions; objections; etc.) having regard to time-limit for approval in national law of notifying Member State. | | |
| Process for Related Interim Communications (request for further information / clarification; etc.). | | |
| Identification of Key Issues Arising / for Review having regard to Article 13(3) and Article 14 of the ZAMCOM Agreement. | | |
| Other (specify) | | |

Annex 4: Letter of Response to Notification

[Official Letterhead]

Address

Date

Copy: Head of Delegation of ZAMTEC of Notified / Responding Member State
(where appropriate)]

RE: RESPONSE NOTIFICATION OF PLANNED PROGRAMME, PROJECT OR ACTIVITY

Dear Executive Secretary,

In accordance with the ZAMCOM Agreement and the ZAMCOM Procedures for Notification of Planned Measures, I hereby wish to provide you with the official response of [Responding Member State] to the [Preliminary / Technical] notification provided in respect of planned [Name of Programme, Project or Activity].

Option 1.

This response is intended to inform you that we have no objection to the planned [Programme, Project or Activity] named above. After careful deliberation, we hereby accept the [named Programme, Project or Activity] and request that the following conditions be incorporated into your legal authorisation to theponent.

[List all Conditions considered important to the Responding / Notified Member State, including arrangements for monitoring, reporting, etc.]

OR

Option 2.

This response is intended to detail our findings regarding the nature and extent of impacts of planned [Name of Programme, Project or Activity] upon our national interests having regard to the principles set out in Article 12 of the ZAMCOM Agreement.

Signature

*[Name of Official Representative of the
National Body Deemed Appropriate by the
Notified / Responding Member State]*

Annex 5: Letter of Request to Notify Pursuant to Article 16(2) of the ZAMCOM Agreement and Section 5.2 of the Procedures

Official Letterhead of Requester

Requester: (Executive Secretary of ZAMCOM /
Requesting Member State Head of
Delegation to ZAMCOM)
Requestor's Name, Address and
Contact Details

Addressee: Head of Delegation to ZAMCOM of
Member State Planning Programme, Project or
Activity (or other nominated body, if applicable)
Addressee's Name, Address and
Contact Details

Date of Request

Name of Programme, Project or Activity, along with location (provide map if applicable)

Brief Description of programme, Project or Activity in Question

Documented Explanation for Request, including:

- Reason(s) for believing Addressee is planning a programme, project or activity falling under Article 16(1) of the ZAMCOM Agreement (with evidence where available);
- How the planned programme, project or activity in question might adversely affect the Zambezi Watercourse or any other Member State;
- If and how the planned programme, project or activity in question may prove to be inconsistent with the principles of the ZAMCOM Agreement;
- The relationship of the planned programme, project or activity in question to the IWRM Strategy and Implementation Plan for the Zambezi Watercourse and/or the Strategic Plan for the Zambezi Watercourse; and
- Any other information that the Requester considers relevant regarding the possible adverse effects of the planned programme, project or activity in question.

Signature of Authorised Officer



Ministry of Foreign Affairs of Denmark
DANIDA INTERNATIONAL
DEVELOPMENT COOPERATION

